

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE: BLUE CROSS BLUE SHIELD
ANTITRUST LITIGATION
(MDL No.: 2406) }
} Master File No.: 2:12-CV-20000-RDP
} }
} }

JOINT RESPONSE TO ORDER SETTING HEARING ON APPOINTMENT OF
INTERIM LEAD CLASS COUNSEL AND PLAINTIFFS' STEERING COMMITTEE

Defendant Louisiana Health Service & Indemnity Company d/b/a Blue Cross/Blue Shield of Louisiana (“BCBS-LA”), through counsel, and jointly with Daniel A. Small of the law firm Cohen Milstein Sellers & Toll PLLC (“CMST”), hereby file this response to the Court’s April 12, 2013 Order setting a hearing date on the Special Master’s Rule 23 Report Recommending Interim Plaintiff Leadership Counsel, and any objections thereto.

1. In the Special Master's Rule 23 Report, Mr. Small was recommended as a member of the Interim Plaintiffs' Steering Committee for the Subscriber Track. *See* Apr. 10, 2013 Report (D.E. 43).

2. Different counsel at CMST currently serves as co-leadership counsel in the *In re Lipitor Antitrust Litigation*, MDL No. 2332 (D.N.J.), in which BCBS-LA is a named plaintiff.

3. After considering BCBS-LA’s claim of a conflict between BCBS-LA and CMST, the *Lipitor* Court, without stating whether a conflict exists, adopted certain protections in that litigation. See Jan. 17, 2013 Order (*Lipitor* D.E. 310), Ex. 1 hereto.

4. Counsel for BCBS-LA and Mr. Small have conferred regarding CMST's role in this matter and, subject to the Court's approval, propose the following protections, which mirror those that were imposed in the *In re Lipitor Antitrust Litigation*, to address the alleged conflict:

- a. CMST will not be involved in any litigation decision specifically involving BCBS-LA (as opposed to decisions affecting defendants generally).
- b. No CMST attorney or paralegal involved in this litigation will have any involvement in *In re Lipitor Antitrust Litigation* and no CMST attorney or paralegal involved in *Lipitor* will have any involvement in this litigation, and no information obtained from BCBS-LA by any CMST attorney or paralegal in either case will be shared with any CMST attorney or paralegal in the other case.
- c. CMST will not be involved in taking any discovery from BCBS-LA in this litigation, including but not limited to document discovery, interrogatories, and depositions of BCBS-LA or its personnel. This restriction does not apply to discovery taken from defendants generally.
- d. CMST will not be involved in briefing or arguing any motion or other request for relief in this litigation that pertains specifically to BCBS-LA, whether filed by BCBS-LA or filed by the Plaintiffs. This restriction does not apply to requests for relief filed by defendants generally or filed by plaintiffs against defendants generally.
- e. BCBS-LA, through its counsel, shall report to the Court any future action of CMST which it believes gives rise to a substantial conflict of interest by CMST against BCBS-LA.

Respectfully submitted this 17th day of April, 2013.

/s/ Daniel A. Small

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2013, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Emily M. Yinger
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